

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: AUGUST 19, 2015
CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [14-12200](#)-A-7 ALVIN SOUZA, JR. AND MOTION REQUESTING APPROVAL OF
[14-1082](#) ROBYN SOUZA KGL-2 STIPULATION TO DISMISS SECOND
MILLER HAY AND TRUCKING, INC. THROUGH FIFTH CLAIMS FOR RELIEF
V. SOUZA, JR. ET AL 7-21-15 [[82](#)]
KEVIN LITTLE/Atty. for mv.

Final Ruling

Motion: Dismiss Adversary Complaint Objecting to Discharge

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISMISSAL UNDER RULE 7041

"Rule 41 [of the Federal Rules of Civil Procedure] applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper." Fed. R. Bankr. P. 7041. "Most bankruptcy judges require a plaintiff seeking to dismiss a § 727 action to give notice to any trustee appointed in the case, the U.S. Trustee and all creditors, informing the noticed parties they have a right to substitute in as plaintiff in the action instead of having the action dismissed." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 20:264, at 20-37 (rev. 2014); *accord In re Speece*, 159 B.R. 314, 321 (Bankr. E.D. Cal. 1993) (citing Fed. R. Bankr. P. 7041) ("[T]he rules of procedure forbid voluntary dismissal without notice to the case trustee and to the United States trustee, either of whom were entitled to bring the action in the first instance, so that they may have an opportunity to protect the rights of their constituencies.").

Plaintiff Miller Hay and Trucking, Inc. has moved to dismiss the complaint in the present adversary proceeding. Rule 7041 applies. Notice has been given to all creditors, the trustee, and the U.S. Trustee, and none has objected or requested to be substituted in for the plaintiff. Accordingly, the court will grant the motion and dismiss the adversary complaint.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Plaintiff Miller Hay and Trucking, Inc.'s motion to dismiss the complaint objecting to discharge under § 727 has been presented to the court and notice has been provided to all creditors, the case trustee, and the U.S. Trustee. Having entered the default of respondent creditors, the case trustee, and the U.S. Trustee for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and that the second through fifth causes of action of the complaint are dismissed with prejudice.

2. [12-12304](#)-A-7 MARTHA FAIR CONTINUED STATUS CONFERENCE RE:
[15-1053](#) COMPLAINT
FAIR V. BANK OF AMERICA, N.A. 4-22-15 [[1](#)]
ET AL
THOMAS ARMSTRONG/Atty. for pl.

No tentative ruling.

3. [15-10157](#)-A-7 LAWRENCE PARKER CONTINUED STATUS CONFERENCE RE:
[15-1011](#) AMENDED COMPLAINT
U.S. TRUSTEE V. PARKER 1-29-15 [[7](#)]
GREGORY POWELL/Atty. for pl.

Final Ruling

A default judgment entered, the status conference is concluded.

4. [09-16160](#)-A-13 JUAN HURTADO CONTINUED MOTION FOR
[11-1102](#) COMPENSATION FOR SCOTT R.
JONES V. HURTADO BURTON, PLAINTIFFS ATTORNEY(S)
6-14-15 [[323](#)]
RESPONSIVE PLEADING

No tentative ruling.

5. [09-16160](#)-A-13 JUAN HURTADO CONTINUED MOTION TO STRIKE
[11-1102](#) BPM-29 6-28-15 [[337](#)]
JONES V. HURTADO
BRIAN MOQUIN/Atty. for mv.
RESPONSIVE PLEADING

No tentative ruling.

6. [14-14479](#)-A-7 FABIO GALVEZ CONTINUED STATUS CONFERENCE RE:
[14-1153](#) COMPLAINT
GALVEZ ET AL V. THE UNITED 12-19-14 [[1](#)]
STATES OF AMERICA, THE

Final Ruling

The status conference is continued to September 30, 2015, at 10:00 a.m.

7. [15-11390](#)-A-7 RICHARD CABELLO AND ORDER TO SHOW CAUSE - FAILURE
[15-1086](#) KRISTI ROZA-CABELLO TO PAY FEES
BLANK V. CABELLO ET AL 7-27-15 [[10](#)]

Tentative Ruling

If the filing fee for the complaint has not been paid in the full amount of \$350 by the time of this hearing, the complaint will be dismissed without prejudice.